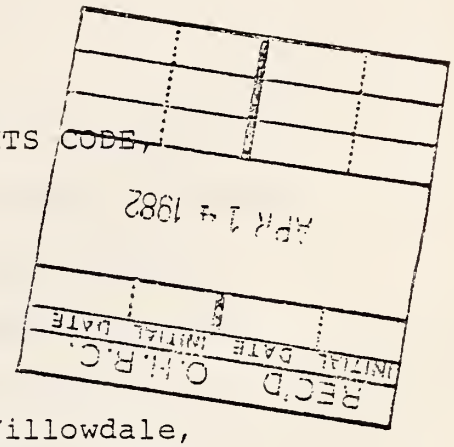

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE,
R.S.O. 1980, c. 340

AND IN THE MATTER OF

Complaints made by Miss Cynthia Joseph of Willowdale, Ontario alleging discrimination in employment by the North York General Hospital, 4001 Leslie Street, Willowdale, Ontario and by the College of Nurses of Ontario, 600 Eglinton Avenue East, Toronto, Ontario

BOARD OF INQUIRY

Professor Ian A. Hunter

Decision on Preliminary Objections

Appearances:

Mr. John Judge, Counsel to the Ontario Human Rights Commission

Mr. Charles Roach, Counsel to the Complainant, Cynthia Joseph

Mr. Christopher G. Riggs, Counsel to the North York General Hospital

INTERIM DECISION

On July 15, 1981, I was appointed a Board of Inquiry by the Honourable Robert Elgie, then Minister of Labour, to hear and decide the complaint of Cynthia Joseph dated October 1, 1979, alleging employment discrimination against North York General Hospital (complaint Appendix A). After discussion with the parties concerning possible hearing dates, I was requested by Mr. John Judge, Counsel to the Ontario Human Rights Commission, with the concurrence of all parties, to postpone the scheduling of a hearing until a Board of Inquiry could be appointed to deal with a second related complaint.

On February 15, 1982, I was appointed a Board of Inquiry by Mr. R.H. Ramsay, Minister of Labour, to hear and decide a complaint by Cynthia Joseph dated January 25, 1982 alleging employment discrimination against the North York General Hospital and the College of Nurses of Ontario (complaint Appendix B). On 17 March, 1982, I convened a hearing in Toronto to deal with certain preliminary objections. Participating as counsel at that hearing were Mr. Roach, representing the complainant, Mr. Judge, representing the Ontario Human Rights Commission, and Mr. Riggs, representing the North York General Hospital. The College of Nurses of Ontario was advised of the date and place of hearing but did not choose to be represented or to participate on the preliminary objections. This decision is confined to the two preliminary objections raised by Mr. Riggs.

(1) Particulars

The complaints, which form the subject-matter of this inquiry, are appended (Appendices A and B). Section 15(1) of the Code provides that the complaint shall be "...in the form prescribed by the Commission." The face of the complaint form outlines the allegation of discrimination. In the absence of any viva voce evidence, but from a plain reading of the initial complaint form, the general allegation of discrimination appears to be of a racially-motivated campaign of harassment, taking the specific form of (a) differential disciplinary treatment, (b) demotion, (c) additional supervision, (d) changes in working conditions. The second complaint (Appendix B) again alleges a racially-motivated campaign of harassment, taking the specific form this time of (a) untenable working conditions, leading to (b) employer's orders to submit to a physical and psychiatric examination, and (c) firing, and (d) an investigation of professional competence by the College of Nurses of Ontario, resulting in (e) suspension of her licence as a registered nurse.

The complaint forms themselves give sketchy particulars of some, but not necessarily all, of the specific manifestations of this alleged "campaign of harassment."

Section 8(1) of the Statutory Powers Procedure Act, applicable to Boards of Inquiry exercising a statutory power of decision pursuant to the Ontario Human Rights Code (s. 19), provides: "Where the good character, propriety of conduct or

competence of a party is in issue in any proceedings, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto."

From a plain reading of the complaints themselves, there can be no doubt that "the propriety of conduct" of the North York General Hospital, and its senior administrative staff, is in issue in these proceedings. Accordingly, the respondent is entitled to be furnished with "reasonable information of any allegations" with respect to that conduct.

In compliance with this obligation, prior to the hearing Mr. Judge, on behalf of the Commission and the complainant, furnished a seven page document entitled: "Response to Request for Particulars" (Appendix C). The first preliminary issue is the adequacy of this response.

Mr. Riggs contended that the Particulars provided in Appendix C are deficient in several respects: (a) "examples" only, rather than a comprehensive catalogue of the "campaign of harassment", are cited; (b) some of the specific incidents alleged in the "campaign of harassment" do not mention the particular hospital employee allegedly involved; (c) to the extent that specific incidents are particularized, in some cases dates are absent and, in other cases, the specific impropriety alleged against the hospital is not sufficiently detailed.

The relief Mr. Riggs requested was an order of this Board that the Commission supply further and better particulars of

the discrimination alleged.

Human rights cases have no pre-hearing pleadings: to inform themselves on the allegation and the issues, respondents must rely on the complaint form itself plus whatever particulars are furnished by the Commission or ordered by the Board. In this case, particulars have been provided and the issue is their adequacy.

In Fairbairn v. Sage (1925), 56 O.L.R. 462 at 470, Ferguson J.A. enumerated the purposes of particulars as follows:

"Particulars are, I think, ordered for several purposes:

(1) to define the issue;

(2) to present surprise;

(3) to enable the parties to prepare for trial;

(4) to facilitate the hearing."

Applying each of these four purposes to the particulars supplied in this case, I am satisfied that these particulars adequately fulfil these purposes.

The application of s. 8 of the Statutory Powers Procedure Act to pre-Board of Inquiry disclosure requirements under the Ontario Human Rights Code was considered in the Walbar Machine Products decision (1980) C.H.H.R. Para. 1994. The Board Chairman, Professor Gorsky, distinguished between "disclosure of the facts on which a party relies" versus "the evidence in support of the facts" (following the terminology of Haines J. in Rubinoff v. Newton (1967), 1 O.R. 402 at 404).

Professor Gorsky wrote: "Whatever the scope of the information which must be furnished, its purpose is to define the issues and thereby prevent surprise by enabling the party against whom the allegations are made to prepare for the hearing."

Having reviewed the particulars already provided, I have concluded that they reasonably define the issues and enable the North York General Hospital to adequately prepare for the hearing.

Accordingly, I decline to order further particulars and Mr. Rigg's first objection is dismissed.

(2) The Subpoenas *Duces Tecum*

Mr. Rigg's second preliminary objection is by way of motion to have set aside two subpoenas duces tecum, the first directed to Eleanor Morton, Director of Medical Records of North York General Hospital, requiring her to produce: "patient records from June 1, 1978 to June 18, 1980, including care plans and charts, notes of clinical conferences, medication charts, and all notes, memoranda and records of all patient care, medication errors and incident reports, complaints and the Staff Communication Book for nurses on the seventh floor, in the possession of North York General Hospital, its servants or agents, maintained for the following patients cared for by the complainant"; there follow sixty-three named

former hospital patients, and seventeen additional patients identified only by a stated code number.

The second subpoena duces tecum is directed to Anne Waldron, Personnel Manager of the North York General Hospital, and requires her to produce: "personnel files, attendance records, and disciplinary records maintained by the North York General Hospital for the following nurses during the period 1977-1980"; there follows twenty-seven named nurses.

"2. All notes, memoranda, correspondence and other documents in the possession of North York General Hospital, its servants and agents, contained in or relating to:

(a) the personnel file of Cynthia Joseph;

(b) disciplinary proceedings and penalties against Cynthia Joseph during the course of her employment from 1977-1980; and

(c) performance reviews, appraisals and criticisms of Cynthia Joseph by North York General Hospital, its servants or agents, including Gale Ouellette;

3. Documents setting out the nursing policy and objectives and primary nursing guidelines maintained by North York General Hospital for psychiatric nurses;

4. Operating guidelines and policies for the employee assistance program established by North York General Hospital;

5. All employee assistance program files including, without limitation, all notes, memoranda, correspondence, charts and diagnoses contained therein or relating thereto

for the following employees of North York General Hospital:

(a) Cynthia Joseph;

(b) all employees who were directed as a term of employment or referred to the employee assistance program during the course of their employment from 1977-1980."

In their text on Administrative Law and Practice, Reid and David state: "...there is no common law right to discovery, unless a right is conferred by the relevant legislation, none exists." (p. 92)

No right to discovery is conferred by the Ontario Human Rights Code.

Section 12(1) of the Statutory Powers Procedure Act provides:

(1) A tribunal may require any person, including a party, by summons,

(b) to produce in evidence at a hearing documents and things specified by the tribunal,

relevant to the subject-matter of the proceedings and admissible at a hearing."

The statutory test for ordering production of documents by a tribunal governed by that section seems to me to be (a) for production in evidence, if (b) relevant and (c) admissible. Given the rules governing admissibility (essentially, relevance: s. 15(1)), I conclude that I ought only to issue a subpoena for production of documents where I am satisfied that the documents sought are for the purpose of introduction in evidence and are

relevant to the subject-matter of the proceedings before this Board of Inquiry. At this stage, having heard no evidence, I can only determine relevancy from the allegations of discrimination made on the face of the two complaint forms.

"A subpoena duces tecum or an application in the nature of such a subpoena...may be set aside or refused where it appears that the request is irrelevant, fishing, speculative or oppressive." The Supreme Court Practice, 1979, Part 1, at p. 606 referring to Senior v. Holdsworth, [1976] Q.B. 23 at 35, per Lord Denning: "...The Court should exercise this power only where it is likely that the [document] will have a direct and important place in the determination of the issues before the Court. The mere assertion that the document may have some bearing will not be enough. If the judge considers that the request is...fishing or speculative...the judge should refuse it."

The Ontario Human Rights Code makes no provision for discovery in advance of a Board of Inquiry. On the other hand, the Code does confer extensive power on the Commission and its investigating officers to "...require the production for inspection or examination of employment applications, payrolls, records, documents, writings and papers that are or may be relevant to the investigation of the complaint" (s. 16(2)(b) of the Code).

Referring to this "wide power" in the recent case of O.H.R.C. and O'Malley v. Simpsons Sears (judgment released March 2, 1982, as yet unreported) Mr. Justice Southey implied,

in my respectful opinion, that it was limited to the investigative stage: "The wide powers given to the Commission under s. 16 of the Code to enter private premises, seize documents, and question persons in the course of inquiries into complaints make it difficult, in my view, for an employer to conceal successfully an intentional discrimination...." [emphasis added]

Moreover, the legislation prohibits a respondent from failing to comply with a proper request for production in the course of investigation, or withholding documentation relevant to the investigation (s. 16(5)), and makes contravention a summary conviction offence (s. 21).

In my opinion, the legislative intention to be deduced from these sections is to provide authority to require disclosure and production of documents from the respondent during the investigation of a human rights complaint. Such disclosure will assist the Commission should conciliation and settlement (required by s. 16(1) of the Code) prove unfruitful and in exercising its discretion in recommending to the Minister whether or not a Board of Inquiry should be appointed to hear and decide the complaint (s. 17). Similarly, full disclosure at the investigation stage would be desirable, if not essential, in order that the Minister make a properly informed decision as to whether or not to appoint a Board of Inquiry (s. 17). As I have said, the legislature has made explicit provision for dealing with a recalcitrant respondent who refuses disclosure.

However, once the Minister has appointed the Board of Inquiry, the Code is silent on disclosure or discovery requirements. In my opinion, this was not legislative omission but rather a deliberate recognition that adequate provision had already been made for compelling disclosure at an earlier (i.e. pre-Board) stage.

Investigation of human rights complaints is frequently involved and protracted. In the instant case twenty-one months elapsed between the filing of the initial complaint and the appointment by the Minister of the Board. That is sufficient time for the Commission to compel production.

In my opinion, it would be unproductive and contrary to the legislative intention to countenance further delay while the parties seek additional disclosure and discovery of documents.

Once the Board of Inquiry is appointed, it is assumed that the Commission has conducted a full, thorough and informed investigation of all the relevant facts. I construe the absence of legislative provision for any pleading or discovery stage as an indication that the hearing is to commence as expeditiously as possible. And that hearing is to be as informal as the mandatory procedures imposed by the Statutory Powers Procedure Act permit. In my opinion, it would be contrary to the legislative scheme provided to bring in, through the issuance of subpoenas duces tecum, a disguised form of discovery which the legislature has not seen fit to

provide expressly. In this respect, I again concur with my colleague, Professor Gorsky, who wrote in the Guru v. McMaster University decision (1981) C.H.R.R. para. 2185: "Counsel appear to have been of the view that the power to issue a subpoena duces tecum permitted the use of such device for the purpose of obtaining production and discovery of the documents sought. The legislature has provided for the form of production for inspection and examination of documents by the Commission or an officer of the Commission. I have concluded that a power to issue a subpoena duces tecum does not provide an alternative method of securing this purpose."

On the undesirability of engrafting a form of disguised discovery in advance of a human rights hearing, I hope I am adopting, with respect, the tenor and the spirit of the Ontario Court of Appeal's recent admonition to arbitration Boards in Corporation of the City of Toronto v. C.U.P.E., Local 79 (reasons for judgment March 2, 1982; as yet unreported) in which Blair J.A. urged administrative tribunals to "...proceed with the maximum of common sense and a minimum of technicality." Although the Court was there dealing with an issue of admissibility in evidence rather than production of documents, I subscribe to and respectfully adopt these words of Mr. Justice Blair:

> "...What has happened in this case seems to me to confound the intention of the legislature, which wisely decided that grievances under collective agreements should not be adjudicated upon by the Courts. It is obvious that the rigidities and technical rules of court procedure would interfere with the necessarily broad inquiry required.

> The purpose of arbitration of grievances under collective agreements is to provide an expeditious and fair method of settling disputes which experience has demonstrated are much better solved in that fashion than by complex judicial proceedings.
>
> ...It is, therefore, surprising to observe the extent to which arbitration awards purport to deal with complex questions of law. Many arbitration Board decisions cited to us contain scholarly dissertations on important substantive and procedural rules applicable to judicial proceedings. They exemplify the extreme legal formalism and adherence to technical rules which overhangs the arbitration process. At best these elaborate legal studies may be irrelevant because Boards are not bound in their procedure by technical rules of law and procedure. At worst, they can cause delay and unnecessary expense and, as the argument in this appeal demonstrated, they could obscure the real issues confronting an arbitration Board and confuse it in the performance of its duty. While it may be helpful for arbitration Boards to seek guidance by way of analogy from established legal procedures, they risk committing jurisdictional error by rigid adherence to them.

With respect to the two subpoenas in the instant case, I have no evidence, at this preliminary stage in the proceedings, that any of the material therein sought is necessary "to be produced in evidence" at the hearing, or even "relevant." (Section 12(1) Statutory Powers Procedure Act.) In the course of the hearing the existence of relevant documents may come to light through testimony of witnesses; in that event, I am satisfied that s. 12(1) gives the Board authority to order production in evidence of such a document and, if necessary, to grant an adjournment for that purpose. Of course, this could protract the hearing unnecessarily (a particularly worrisome possibility given a Board of Inquiry's lack of authority to award costs) and on this point I express agreement with Professor Ratushny's interim

decision in Niedzwiecki v. Beneficial Finance (May 29, 1981);

> "It would be far more preferable for both counsel to have made full and frank voluntary disclosure prior to the hearing. The prospect of a possible 'cat and mouse' game throughout the course of the hearing is not in the best interests of the administration of justice nor, in the long run, will it be in the best interests of the parties."

For the foregoing reasons, the subpoenas duces tecum served upon Eleanor Morton and Anne Waldron are hereby set aside.

Two other grounds of objection to the two subpoenas were urged upon me by Mr. Riggs. Although I have set the subpoenas aside on the grounds indicated above, I shall, in deference to the care and thoroughness with which these points were argued by both counsel, briefly indicate my position on one of them.

In Re Dalgleish and Basu (1974), 51 D.L.R. (3d) 310, Bayda J. of the Saskatchewan Queen's Bench dealt with an application to set aside a subpoena duces tecum in a fact situation bearing certain similarities to the instant case. Mr. Justice Bayda wrote:

> "The fundamental principle that applies in determining whether the description of the documents in a subpoena is too broad and indefinite is stated by Wigmore, at p. 126, in these words: 'It must specify, with as much precision as is fair and feasible, the particular documents desired'. Lord Denning, N.R. in Soul v. Inland Revenue Commissioners, [1963] 1 W.L.R. 112 at p. 114, uses the words 'with resonable distinctiveness' to describe the desired standard."

Applying the test in the Statutory Powers Procedure Act (production in evidence at the hearing and relevance) and this test of "reasonable distinctiveness", I would have held that the description of documents sought in the subpoena to Eleanor Morton does not meet these tests, being deficient in both scope and volume, and suggestive of a fishing expedition rather than an attempt to obtain relevant exhibits for introduction at a hearing.

Applying the same tests to the subpoena issued to Anne Waldron, I would have set aside paragraphs 1, 3, 4 and 5(b).

Mr. Rigg's final objection to the subpoenas was based on s. 49 of Regulation 865 made under the Public Hospitals' Act which prohibits a hospital Board from permitting removal, inspection or receipt of information from a medical record, but goes on to exempt records produced pursuant to process "...issued in Ontario out of a Court of Record or any other court."

Given the decision I have already reached, it is unnecessary to determine whether or not a Board of Inquiry falls within this exception and I refrain from expressing any opinion on that point.

DATED at the City of London this 6th day of April, 1982.

IAN A. HUNTER
BOARD OF INQUIRY

Ontario Human Rights Commission

APPENDIX A

COMPLAINT OF DISCRIMINATION
UNDER THE ONTARIO HUMAN RIGHTS CODE

III A35

7,

COMPLAINT NO. E6380

CODE PROVISION NO. 4(1)(c)(d)(g

NAME & ADDRESS OF COMPLAINANT

Miss Cynthia Joseph
292 Finch Avenue, West
Apartment 106
Willowdale, Ontario
M2R 1M1

AGAINST

NAME & ADDRESS OF INDIVIDUAL/ORGANIZATION COMPLAINED AGAIN

North York General Hospital,
its servants and agents
4001 Leslie Street
Willowdale, Ontario
M2K 1E1

The Complainant alleges that on,

DATE

Day	Month	Year
25	September	1979

about the

IN RESPECT OF

NAME & ADDRESS OF PERSON/CLASS OF PERSONS DISCRIMINATED AGAIN

Self

The Accused contravened a provision of THE ONTARIO HUMAN RIGHTS CODE

CONTRAVENTION REASON:

[X] RACE [ ] CREED [X] COLOUR [ ] AGE [ ] SEX [ ] MARITAL STATUS [ ] NATIONALITY [X] ANCESTRY [X] PLACE OF ORIG

PARTICULARS OF DISCRIMINATION (Use Reverse if Necessary)

I was hired as a Registered Nurse on February 18, 1975 by the above cited hospital. It is my belief that I performed my duties satisfactorily and made no major errors, or more minor errors than anyone else in the position.

Despite my efforts I have been the victim of a campaign of harassment in order to have me removed from my position and possibly have my license revoked. The Unit Administrator, Gail Ouellette has subjected me to disciplinary actions, such as verbal and written warnings, for minor or non-existent acts that the white Registered Nurses are not equally disciplined for. This campaign has also resulted in my being demoted in the responsibilities and functions of my job. I receive more supervision than the rest of the staff and I am more restricted in my duties. I am also aware of her making comments through other staff members, about not wanting to hire non-whites, and was therefore surprised to see me. There are two previous non-white Registered Nurses who have been similarly harassed and eventually requested transfers, much in the same manner that I am currently experiencing. Others have been dismissed by the hospital. I also believe that non-white patients are treated in a discriminatory manner.

Most recently, on Tuesday, September 26, 1979, Mrs. Ouellette forced me to take a day off work and changed my schedule to the day shift in order that I receive closer supervision and training. Due to previously made commitments I had to take a further two absent days without pay. It is my belief that this move will lead to further harassment for me.

On September 26, 1979 I was given a letter which stipulates changes in my working conditions. I was also forced into a meeting with Mrs. Ouellette and Miss C. Caron during which I was told that no changes were to take place in my six week schedule and that I would be supervised as necessary.

The hospital's administration is aware of my situation and have done nothing to assist me as I have requested. In fact, they appear to be in support of Mrs. Ouellette and have refused my request for a transfer.

ONTARIO
MINISTRY OF LABOUR
OCT 1 1979
HUMAN RIGHTS COMMISSION
1 0 6 2 3 0
FILE CODE

CITY/TOWN COMPLAINT SIGNED AT

DATE

Day	Month	Year

SIGNATURE OF COMPLAINANT

Ontario Human Rights Commission

APPENDIX B

COMPLAINT OF DISCRIMINATION
UNDER THE ONTARIO HUMAN RIGHTS CODE

COMPLAINT NO. W-7331
CODE PROVISION NO 4 (1)(b)(c)(d) (g), 5 (2), 6

NAME & ADDRESS OF COMPLAINANT

Cynthia Joseph,
292 Finch Avenue West,
Apt. 106,
WILLOWDALE, Ontario
M2R 1M1

AGAINST

NAME & ADDRESS OF INDIVIDUAL/ORGANIZATION COMPLAINED AGAINST

North York General Hospital,
4001 Leslie Street,
WILLOWDALE, Ontario. M2K 1E1,
their servants and agent,
College Of Nurses of Ontario,
600 Eglinton Avenue East,
TORONTO, Ontario. M4P 1P4.

The Complainant alleges that on, about the DATE Day 16 Month April Year 1981 IN RESPECT OF SELF

NAME & ADDRESS OF PERSON/CLASS OF PERSONS DISCRIMINATED AGAINST

the Accused contravened a provision of THE ONTARIO HUMAN RIGHTS CODE

CONTRAVENTION REASON

[X] RACE [ ] CREED [X] COLOUR [ ] AGE [ ] SEX [ ] MARITAL STATUS [X] NATIONALITY [X] ANCESTRY [X] PLACE OF ORIGIN

PARTICULARS OF DISCRIMINATION (Use Reverse if Necessary)

I was employed as a Registered Nurse on February 18, 1975 by the North York General Hospital where I performed my duties satisfactorily and made no major errors, or more minor errors than anyone else in my department which was Psychiatry.

A campaign of harassment which was racially motivated and instigated by my Unit Administrator created untenable working conditions and eventually forced me to make a complaint to the Ontario Human Rights Commission when the Administration of the hospital took no remedial action. When it got to the point that I was ordered for no valid reasons to report to the Health Services for a physical and psychiatric examination, I filed a complaint of racial discrimination with the Commission on October 1, 1979.

I was subjected to several disciplinary actions more severe than for others on the floor, the last of which was a transfer to a floor where I was black listed before my arrival. I indicated to the hospital that I was prepared to work elsewhere in the hospital but would not report to the floor to which I was being sent. I was subsequently notified that I was fired for failing to accept this transfer. At no time was any valid allegation made as to my emotional or physical unfitness for work.

Subsequent to this, I was, I believe at the instigation of the hospital, accused of "a failure to meet the standards of nursing practice", a charge which the College of Nurses must investigate.

Both the Hospital and College have, without valid reasons, criticized the care and treatment which I gave to various patients from 1978 to 1980. I have been deprived of access to the records of these patients, which I believe will show that I maintained a proper and reasonable standard of care and performance throughout.

Over....

CITY/TOWN COMPLAINT SIGNED AT TORONTO

DATE Day 25 Month January Year 1982

SIGNATURE OF COMPLAINANT

Although it has been made clear to the College that my transfer, is seen as a disciplinary act and is the subject of a grievance currently going through the arbitration process, the College acted as a tool of the hospital and proceeded with an investigation of this charge shortly after becoming aware of my complaint to the Ontario Human Rights Commission.

Instead of awaiting the outcome of the arbitration of my grievance and my complaint of discrimination, the College, at the hospital's bidding has seen fit to victimize me by suspending my licence although they were aware that I was not working as an R.N.

This information was forwarded to me by letter dated April 24, 1981. Prior to taking this decision, like the hospital, the College tried to insist that I go for a physical and psychiatric examination.

I believe that the above cited persons have violated section 4 (1)(b)(c)(d)(g), section 5 (2) and section 6 (a)(b)(c)(d) on the grounds of section 6 (e)(f)(g)(h) of the Ontario Human Rights Code, Revised Statutes of Ontario, 1980, Chapter 340.

#5

APPENDIX C

THE ONTARIO HUMAN RIGHTS CODE,
R.S.O. 1970, c. 318, as amended.

IN THE MATTER OF the complaint made by Miss Cynthia Joseph of Willowdale, Ontario, alleing discrimination in employment by the North York General Hospital, 4001 Leslie Street, Willowdale, Ontario.

RESPONSE TO REQUEST FOR PARTICULARS

A. The campaign of harrassment referred to by the complainant began on or about August, 1978, and consisted of the continuous and unwarranted criticisms of the complainant's performance, directed at the complainant by Gail Ouellette, the Unit Administrator, and by the Team Leaders under Gail Ouellette's direction, as well as the unusual degree of documentation required of the complainant, from time to time, by Gail Ouellette. Examples of this campaign of harrassment include:

(1) An incident involving the nursing care plan of Patient #4586/78 on or about June 24, 1978;

(2) An incident involving communication of a telephone request on or about August 4, 1978;

(3) An incident involving an examination of the complainant's patient load or records by Gail Ouellette;

(4) An incident involving the removal of clothing and the searching of the purse of Patient #14548/78 on or about December 6, 1978;

(5) An incident involving collaboration with the health care team before encouraging Patient #17389/79 to consider seeing a social worker for assistance in February, 1979;

(6) An incident involving Gail Oullette's concern with an open pantry door;

(7) An incident involving assessment or determination of the need for medication for Patient #17215/79 on or about February 28, 1979;

(8) An incident involving the health care plan of Patient #17823/79 as it related to printed religious music, on or about March 5, 1979;

(9) An incident involving communication with regard to concerns expressed by Patient #03016/79 on or about June 14-18, 1979;

(10) An incident involving the failure to be concise when completing an incident report, regarding Patient #04569/79 on or about July 19, 1979;

(11) An incident involving knowledge of the drug requirements of Patient #06450/79 on or about July 30, 1979; and

(12) Other incidents specified in the letter from Miss C. Caron, Assistant Director of Nursing, North York General Hospital, to Mrs. Jean Dalziel, Assistant Director, College of Nurses of Ontario, dated August 8, 1980; and in the letter from Mrs. F. Aleta O'Dea, Investigations Officer, College of Nurses of Ontario, to the complainant, dated October 21, 1980.

B. The written warnings consist of three letters sent to the complainant, more particularly:

(1) the letter from Gail Ouellette to the complainant dated August 4, 1978;

(2) the letter from Gail Ouellette to the complainant dated August 8, 1978; and

(3) the letter from Gail Ouellette to the complainant dated September 17, 1979.

The verbal warnings consist of the remarks made to the complainant by Gail Ouellette following the incidents set forth in Section A of these particulars.

C. The demotion in responsibilities and functions of the complainant's job began on or about August, 1978, and consisted of the following:

(1) the complainant was no longer permitted to act as team leader when such positions were required to be filled on a temporary basis;

(2) the complainant was assigned to perform lower levels of patient therapy;

(3) the complainant was transferred to day shift and subjected to an extremely high level of supervision by Gail Ouellette.

D. The restrictions in the complainant's duties are the same as specified in Section C of these particulars.

E. The statements by the Unit Administrator not wanting to hire non-white employees consisted of rumours

circulating among the nurses of comments allegedly made by Gail Ouellette.

F. Other non-white registered nurses, who worked at North York General Hospital, transferred due to harrassment, including:

(1) Mrs. Carmel Ashmole, a black Canadian citizen who has a post-graduate degree in psychiatry and a unit administrators course, transferred from the 7th floor after five years experience upon receiving a poor evaluation from Gail Ouellette, who had just become Unit Administrator;

(2) Ms. Gloria McKenzie, a black Jamaican, transferred from the 7th floor as a result of the continuous and unwarranted criticisms directed at her by Gail Ouellette, and because of the unusual degree of documentation required of her by Gail Ouellette; and

(3) Ms. Sarah Thomas, an East Indian, who worked at North York General Hospital for approximately ten years, left for another position subsequent to being harrassed by her head nurse, a Mrs. Brenner, who caused documentation problems and difficulties with vacation time and sick leave.

G. The other employees dismissed by the hospital for allegedly improper reasons include:

(1) Kanta Singh; and

(2) Claire Smith.

H. The non-white patients treated in a discriminatory manner include:

(1) Ms. Faigal; and

(2) Ms. Anne Ip.

Particulars of the discriminatory treatment are within the knowledge of the Hospital.

I. The complainant was forced to change her schedule on or about September 26, 1979, when the Unit Administrator, Gail Ouellette, insisted that she change her shift to the day shift in order that the complainant be subject to strict supervision. This change in shifts resulted in a change in the complainant's non-working days. As a result of this change, the complainant was required to take two absent days without pay as a previous commitment had been made to assist relatives from Burma in obtaining entrance to Canada, at the American border. If the shift change had not been demanded by Gail Ouellette, this commitment would have been fulfilled on the previously scheduled non-working days.

J. The support by the hospital administration for the improper conduct of the Unit Administrator includes the refusal by Mrs. Helen F. Evans, Director of Nursing, dated September 11, 1979, to allow Dr. Shinobu, Chief of Staff, to become involved in discussions of the complainant's performance.